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No. 07-261

IN THE

Supreme Court of the United States

Life Partners, Inc., Petitioner

v.

THEODORE V. MORRISON, JR., MARK C. CHRISTIE, and JUDITH WILLIAMS JAGMANN, in their official capacity as the Commissioners of the State Corporation Commission, and ALFRED W. GROSS, in his official capacity as the Commissioner of Insurance, and ROBERT McDONNELL , in his official capacity as the Attorney General of the Commonwealth of Virginia, Respondents,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR *AMICUS CURIAE* 60/PLUS ASSOCIATION, INC. IN SUPPORT OF THE PETITIONER

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INTEREST OF *AMICUS CURIAE*

60/Plus Association, Inc. (60 Plus) is a non-stock, tax-exempt research and educational corporation qualified under United States Internal Revenue Code Section 501(c)(4). 60 Plus was founded as a seniors advocacy group with a free enterprise, less government, less taxes approach to seniors' issues[1].

The interest of 60 Plus in this case stems from its goal of educating seniors and their families about the virtues of a free-market, property-rights oriented future for seniors and their families. To further its mission, 60 Plus maintains a website[2] entitled *60plus.org,* which contains links to a variety of educational materials and articles; its staff prepares analyses, position papers, opinion-editorials and a variety of other materials promoting the 60 Plus agenda; and officials from 60 Plus regularly appear before congressional committees and interact with government officials, journalists and academics.

Allowing seniors to freely exercise their ownership rights in *their* personal property is a paramount concern for 60 Plus, for seniors and for their families. Advocacy for expanding these freedoms marbles throughout the agenda of 60 Plus. When those rights are regulated to the point that they are effectively denied, then seniors and their families

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[1] The parties to this proceeding have filed with the Clerk of the Court blanket consents to all *amicus curiae* briefs. Pursuant to Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no person other than the amicus curiae, its members or its counsel has made monetary contribution to the preparation or submission of this brief.

[2] The webs site may be found at **http://www.60plus.org**.

lose. This case presents a stark example of the effective destruction of a basic property right – here, a senior's right to sell his or her life insurance policy – by the heavy hand of well-intended but wrong-headed regulation of the market place. This litigation therefore cuts to the core of the interest of 60 Plus in promoting a free-market agenda for seniors.

SUMMARY OF ARGUMENT

This case involves state regulation of the secondary life insurance market, and whether – and to what extent - a state may regulate such transactions between in-state policy holders who wish to sell their policy (sellers) to out-of-state purchasers. The Commonwealth of Virginia contends that the McCarran-Ferguson Act (15 U.S.C. §§ 1011 *et seq.*) (the Act) permits it to impose its regulatory scheme on every transaction in the secondary life insurance market, even those arranged at the request of the seller by out-of-state agents on behalf of out-of-state purchasers, as long as the seller is a Virginia resident, no matter that a transaction may be (and likely is) subject to regulation in the agent's and purchaser's state of residence. Petitioners have demonstrated that Virginia's interpretation of the Act significantly burdens and threatens to destroy the secondary life insurance market. The Fourth Circuit, in a needlessly expansive and unprecedented reading of the Act, agreed with Virginia. In the face of conflicting authority in other Circuits and contrary authority from this Court, 60 Plus joins with Petitioners in urging the Court to review the decision of the Fourth Circuit.

ARGUMENT

Virginia's statute, the Virginia Viatical Settlements Act (Va. Code §38.2-6000, *et seq.*) affects more than only the terminally ill. Others, too, have an interest in selling existing life insurance policies to meet a variety of needs. Doherty and Singer, *The Benefits of a Secondary Market For Life Insurance Policies*, 38 Real Prop. Prob. & Tr. J. 448 (2003). For example, policy holders who can no longer afford the premiums or policies that are no longer necessary. (*Id* at 453). These situations generally involve policy holders who no longer require the policy for the reason that it was originally purchased, but they recognize that surrendering it for a low cash value or allowing the policy to lapse devalues the asset.

In this case, the notion that a policy owner is free to sell his or her asset in the open market is undermined by a state law that, in the name of consumer protection, dictates prices at levels in excess of those that the market dictates. The foreseeable result is that buyers will go elsewhere – to states that have not set irreducible prices – and Virginia sellers will lose the practical ability to sell to those they select. Their only real choice will be to deal with the issuer of the policy. Knowing that the seller has no real alternative to surrendering the policy to the issuer, the issuer (who is not bound by the strictures of Virginia's Viatical Settlement Act) is not likely to give the seller a fair price for his or her policy. In short, Virginia sellers will not be able to reap the benefits of a bargain made I the open market. That is an unacceptable burden on interstate commerce.

The burden of Virginia's statute is not only heavy and one-sided, it is far-reaching as well. By its terms, the

Virginia law purports to reach *all* transactions involving in-state sellers, even if those that involve out-of-state buyer or buyers and their agents, even if the transactions are completed out-of-state, and even if they are subject to other states' regulatory schemes. Because the Virginia Viatical Settlement Act imposes such a heavy burden on sales through the secondary life insurance market, that market has been diminished and as a consequence, the value of the life insurance policies of those Virginia residents who want to sell them has been reduced. In a well-intentioned but ill-advised stab at consumer protection, Virginia has effectively choked off the secondary market for Virginia sellers – who are oftentimes seniors in poor health.

The record evidence set out in the Petition proves the point. Petitioner's expert testified that the transaction at issue in this case would not have taken place under the Virginia Act's minimum price requirements. C.A.J.A. 223. It is Virginia's over-regulation – together with other requirements under Virginia law that impose duplicative and costly regulatory/administrative burdens – that unduly burdens interstate commerce and all but shuts out access to the secondary market for Virginian sellers. These burdens, and the resultant lost opportunity to Virginia seniors, are at the core of 60 Plus's concern.

CONCLUSION

On behalf of its members across the United States, 60 Plus respectfully submits this brief as *amicus curiae* in support of the Petition for a Writ of Certiorari of Life Partners, Inc and, upon all of the grounds set forth in Rule 10, asks that *certiorari* be granted.

Respectfully Submitted,
60/Plus Association, Inc.,
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